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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,768	12/05/2003	Peter M. Bonutti	2500DV2CN2DV3CN5	3380

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
3731	

MAIL DATE	DELIVERY MODE
08/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/729,768

Applicant(s)

BONUTTI, PETER M.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-20 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-20 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 27 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedent basis for "each filament".

Claims 15-20 and 27-30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sheldon (3,417,745). Sheldon, in figure 3A, discloses shaft 56 and inflatable bladder 50 which has an eccentric shape upon inflation and cannula 5. Alternatively, the inflatable bladder 57 in figure 4 has the shape of a wedge since it tapers in the proximal direction. The Sheldon bladder, when inflated and axially moved with respect to the cannula, is inherently capable of separating adjacent layers of tissue since the bladder is made of the very strong inelastic material of Mylar (col. 8, lines 55-58) and is filled with a substantially non-compressible material which is liquid (the fluid in the phrase "fluid or gas" referred to in col. 8, line 68) which is substantially non-compressible. Alternatively, it would have been obvious that the Sheldon bladder, when inflated and axially moved with respect to the cannula, is capable of separating adjacent layers of tissue since the bladder is made of the very strong inelastic material of Mylar and is filled with a

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substantially non-compressible material which is liquid. Cannula 5 has an opening at a proximal end portion, an opening at a distal end portion and defining a passage "therethrough" when it is expanded as described in col. 3, lines 19-36. As to claim 16, Mylar (col. 8, lines 55-58) does not stretch when fully inflated. As to claim 19, shaft 56 is rigidified when attached to rigid shaft 2 (col. 2, lines 39-40 and 60-63).

Claims 15-20 and 27-30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Froning (3,875,595). Froning discloses shaft 47, 48, inflatable bladder 46 which has an eccentric shape upon inflation (since the portion on one side of the longitudinal axis of shaft 47, 48 is larger than the portion on the other side of the longitudinal axis) and cannula 31. The Froning bladder, when inflated and axially moved with respect to the cannula, is inherently capable of separating adjacent layers of tissue since the bladder is made of material which is sufficiently strong to hold fluid under pressure (col. 3, lines 17-21) and is filled with a substantially non-compressible material (the water described in col. 3, lines 17-21). Alternatively, it would have been obvious that the Froning bladder, when inflated and axially moved with respect to the cannula, is capable of separating adjacent layers of tissue for

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these reasons. As to claim 16, stretching of bladder 46 will be finished when it is fully inflated. As to claim 19, portion 48 of the shaft is rigid.

Applicant's arguments filed June 11, 2007 have been fully considered but they are not persuasive. The Sheldon cannula 5 rather than housing 23 meets the term "cannula" in the claims. The Froning bladder is inherently capable of being used as claimed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael

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Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

mht



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731